

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MATSCO,

Plaintiff(s),

-against-

ANIMAL EMERGENCY, et al.,

Defendant(s).

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WALL, Magistrate Judge:

ORDER

CV 07-1314 (JFB)(WDW)

Before the court is a motion by the plaintiff Matsco to compel responses to discovery demands by the defendants, and for sanctions. DE[19]. The defendants oppose the motion. DE [20]. For the reasons set forth below, the motion is granted and the plaintiffs are awarded \$250 in sanctions pursuant to Rule 37.

The plaintiff argues, in essence, that it served discovery demands on the defendants on August 11 and responses have never been served. The plaintiff lists several letters and emails and one phone call as good faith efforts to resolve the dispute before making the motion. The defendants oppose the motion, arguing, first, that no good faith effort was made. The court disagrees, and finds that requirement to have been satisfied.

The defendants further argue that they did not respond to the demands because they were engaged in settlement negotiations, and “[g]iven the undeniable settlement posture, preparing discovery responses was orally placed on the back burner – notwithstanding Plaintiff’s several email demands – so as to prevent an unnecessary litigation expense.” DE[20] at 1 (emphasis in original). While the defendants may have found it to be financially sensible to put off work on discovery while settlement negotiations ensued, the Federal Rules do not allow for any automatic extension of the time in which to respond under such circumstances. Instead, Federal Rule 33(b)(3) allows 30 days to answer interrogatories, providing that a “shorter or longer time may be

directed by the court or, in the absence of such an order , agreed to in writing by the parties, subject to Rule 29.” (emphasis added) Rule 34(b) applies the same requirements to demands for production of documents. Here, the defendants rely on an alleged oral agreement extending their time to answer, but the relevant Rules clearly require a written agreement. Thus, the court will grant the motion to compel. Responses must be served within five business days of the date of this order. The court will also award \$250 as reasonable expenses under Rule 37(a) (4).

Dated: Central Islip, New York
October 24, 2007

SO ORDERED:

/s/ William D. Wall
WILLIAM D. WALL
United States Magistrate Judge